

# Minutes Ordinary (Planning) Meeting

Thursday, 10 November 2022



**BYRON**  
SHIRE  
COUNCIL

# BYRON SHIRE COUNCIL

Ordinary (Planning) Meeting Minutes  
10 November 2022

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<b>MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY (PLANNING) MEETING HELD ON THURSDAY, 10 NOVEMBER 2022 COMMENCING AT 9.06AM AND CONCLUDING AT 1.10PM</b>
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I2022/1615

**PRESENT:** Cr M Lyon (Mayor), Cr S Balson, Cr D Dey, Cr A Hunter, Cr S Ndiaye, Cr A Pugh, and Cr P Westheimer

Staff: Mark Arnold (General Manager)  
Esmeralda Davis (Acting Director Corporate and Community Services)  
Phil Holloway (Director Infrastructure Services)  
Shannon Burt (Director Sustainable Environment and Economy)  
Ralph James (Legal Counsel)  
Chris Larkin (Manager Sustainable Development) – Items 13.1, 13.2, 13.3, 13.4, 13.10  
Ivan Holland (Planner) – Item 13.2  
Patricia Docherty (Planner) – Item 13.3  
Dylan Johnstone (Development Investigations Lead) – Item 13.3  
Scott Moffett (Flooding and Drainage Engineer) – Item 8.1  
Steve Denize (Senior Planner) - Item 13.10  
Amber Evans Crane (Minute Taker)

*The Mayor opened the meeting and acknowledged that the meeting is being held on Arakwal Country and that we pay our respects to the elders past and present and extend our respect to the Bundjalung clans whose lands and waters are part of the Shire.*

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## PUBLIC ACCESS

Prior to dealing with the circulated reports and associated information, a Public Access Session was held and Council was addressed on the following:

### Public Access

Report No and Title		Name	For/ Against	Representing	Submission Received in form of
9.1	Bring Julian home; drop the charges	Derek Spice	For	Assange Action Group	In person
		Roy Edward Drew		Northern Rivers NSW 4 Assange	Zoom
13.1	PLANNING - 10.2020.483.1 Staged Development: Stage 1: Farm Cafe, Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool	Jack Dods	For	N/A	In person
		Luke Houghton		Balanced Systems Planning Consultants	In person
13.2	PLANNING - 10.2020.513.1 Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces at 84 Harbour Way BRUNSWICK HEADS	Kate Singleton	Against	Planners North	In person

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Report No and Title		Name	For/ Against	Representing	Submission Received in form of
13.3	PLANNING - 10.2021.212.1 Temporary Use - Rural Function Centre at 36 Keys Road, Coorabell	Jane Magnus	For	Byron Events Industry Association	In person
13.4	PLANNING - DA 10.2022.36.1 - Tourist and Visitor Accommodation Comprising 12 Holiday Cabins and Ancillary Recreation Building	Timothy Gotterson	For	Lawlers Lane residents	In person
		Ralph Mamone	Against	Self	In person
13.6	PLANNING - 10.2021.752.1 - Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision - 140 Alcorn Street, Suffolk Park	Jack Dods	For	Self	In person
13.10	PLANNING - 10.2021.619.1 Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision at 99 Station Street - Mullumbimby	Stephen Connelly	For	Consulting Planner	In person
		James Cressey		East Assets Group	In person
		Kerry Gray	Against	Self	In person

*The meeting adjourned at 10.10am for a lunch break and reconvened at 10.31am.*

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## APOLOGIES

Crs Coorey and Swivel were apologies in accordance with their previously granted leave of absence, resolution numbers **22-476** and **22-563**.

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## APPLICATIONS TO ATTEND BY AUDIO-VISUAL LINK

Cr Balson attended the meeting via audio-visual link in accordance with resolution number **22-474**.

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## REQUESTS FOR LEAVE OF ABSENCE

There were no requests for a leave of absence

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## DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of pecuniary or non-pecuniary interests.

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## TABLING OF PECUNIARY INTEREST RETURNS

There were no Pecuniary Interest Returns tabled.

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## ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

**22-616 Resolved** that the minutes of the Ordinary (Planning) Meeting held 13 October 2022 be confirmed. (Lyon/Westheimer)

*The motion was put to the vote and carried unanimously.*

**RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**

The Mayor suspended standing orders to allow for items to be reserved for debate, being:

**STAFF REPORTS**

**Sustainable Environment and Economy**

- Report No. 13.1 PLANNING - 10.2020.483.1 Staged Development: Stage 1: Farm Cafe, Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool
- Report No. 13.2 PLANNING - 10.2020.513.1 Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces at 84 Harbour Way BRUNSWICK HEADS
- Report No. 13.3 PLANNING - 10.2021.212.1 Temporary Use - Rural Function Centre at 36 Keys Road, Coorabell
- Report No. 13.4 PLANNING - DA 10.2022.36.1 - Tourist and Visitor Accommodation Comprising 12 Holiday Cabins and Ancillary Recreation Building
- Report No. 13.9 Revised Constitution of Climate Change and Resource Recovery Advisory Committee
- Report No. 13.10 PLANNING - 10.2021.619.1 Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision at 99 Station Street - Mullumbimby

The remaining Recommendations and Committee Recommendation were adopted as a whole, being moved by Cr Lyon and seconded by Cr Westheimer. Each recommendation is recorded with a separate resolution number commencing at Resolution No. **22-617** and concluding with Resolution No. **22-620**.

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.5 PLANNING - Report of the Planning Review Committee held 6 October 2022**

**File No:** I2022/1424

**22-617 Resolved** that Council endorses the outcomes of the Planning Review Committee meeting held on 6 October 2022. (Lyon/Westheimer)

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**Report No. 13.6**      **PLANNING - 10.2021.752.1 - Demolition of Existing Dual Occupancy and Ancillary Structures, New Dual Occupancy (Attached), Two (2) Swimming Pools, Removal of Two (2) Trees and Strata Subdivision - 140 Alcorn Street, Suffolk Park**

**File No:**                      I2022/1436

**22-618**    **Resolved** that demolition of existing dual occupancy and ancillary structures, new dual occupancy (attached), two (2) swimming pools, removal of two (2) trees and strata subdivision, be granted consent subject to the conditions in Attachment 4 (#E2022/101359). (Lyon/Westheimer)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

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**Report No. 13.7**      **PLANNING - Quarter 3 SEPP Variations July to September 2022**

**File No:**                      I2022/1487

**22-619**    **Resolved** that Council adopts the report on exceptions to development standards for the period July to September 2022. (Lyon/Westheimer)

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**Report No. 13.8**      **PLANNING - 10.2021.425.1 Community Title Subdivision Twenty (20) Lots, Multi-Dwelling Housing comprising of Twenty (20) Dwelling Houses**

**File No:**                      I2022/1491

**22-620**    **Resolved** that pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2021.425.1 for community title subdivision twenty (20) lots, multi-dwelling housing comprising of twenty (20) dwelling houses, be granted consent subject to the conditions of approval in attachment 3. (Lyon/Westheimer)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

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## PROCEDURAL MOTION

- 22-621 Resolved** that Council change the order of business to deal with Reports 13.4, 9.1, 13.1, 13.2, 13.3 and 13.10 next on the Agenda. (Lyon)

*The motion was put to the vote and carried unanimously.*

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**Report No. 13.4 PLANNING - DA 10.2022.36.1 - Tourist and Visitor  
Accommodation Comprising 12 Holiday Cabins and Ancillary  
Recreation Building**

**File No:** I2022/1296

- 22-622 Resolved:**

1. That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.36.1 for tourist and visitor accommodation comprising twelve (12) cabins and ancillary recreation building, be deferred to enable amended plans and details to be submitted back to Council that reduce the number of cabins to 6 and removes the Ancillary Shed Recreation Building to ensure the development remains consistent with Councils planning controls for small scale low impact rural tourism.
2. The Application be reported back to Council following receipt and assessment of the amended plans. (Ndiaye/Dey)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

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## NOTICES OF MOTION

**Notice of Motion No. 9.1 Bring Julian home; drop the charges**

**File No:** I2022/1532

- 22-623 Resolved** that Council:

1. Recognises Julian Assange is an Australian citizen and a journalist with WikiLeaks who aided in exposing possible war crimes and civilian casualties in the release of documents which included Afghanistan War logs in 2010 and Guantanamo Bay files in 2011, supplied to WikiLeaks by Chelsea Manning, a former United States Army intelligence analyst.
2. Acknowledges Mr Assange genuinely believed his actions were for the purpose of:
  - a) government accountability, transparency and integrity; and
  - b) the broader public interest and for the interest of justice.

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3. Notes that since the publication of those documents, Mr Assange has been forced into isolation or imprisoned over the course of 10 years (including 4 years in His Majesty's Prison Belmarsh) resulting in the serious deterioration of his health and mental wellbeing.
4. Recognises Mr Assange's impending prosecution by the United States of America constitutes a serious attack on the fundamental democratic freedoms of the press.
5. Questions:
  - a) the legitimacy of prosecuting Mr Assange in the United States through that country's Espionage Act of 1917 (carrying a penalty of up to 175 years imprisonment);
  - b) whether that Act applies to non-US citizens either living and / or working in other countries, at the time of any alleged offending; and
  - c) whether, by approving the extradition, the UK Government isn't violating the US-UK Extradition Treaty and international law which states that extradition should not be for political purposes.
6. Calls on the Mayor to write:
  - a) to President of the United States, Joe Biden, expressing Council's desires that President Biden (i) show clemency by intervening in the extradition and prosecution of Mr Assange, and (ii) instruct the US Attorney-General and the US Department of Justice to withdraw all charges on medical and humanitarian grounds;
  - b) to the Prime Minister of Australia, the Right Honourable Anthony Albanese, and to Minister for Foreign Affairs, the Honourable Senator Penny Wong, requesting them to write to the President of the United States and to the US Ambassador to Australia, Ms Caroline Kennedy, expressing Australia's concerns regarding Mr Assange's prosecution.
7. Notes a poll conducted by the Sydney Morning Herald in January 2022 which showed 71% support for Mr Assange being returned to Australia. (Dey/Ndiaye)

## PROCEDURAL MOTION

**22-624 Resolved** that Cr Ndiaye be granted a one minute extension to her speech. (Lyon)

*The motion was put to the vote and carried unanimously.*

*The motion (Dey/Ndiaye) was put to the vote and carried.  
Cr Hunter voted against the motion.*

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1**      **PLANNING - 10.2020.483.1 Staged Development: Stage 1: Farm Cafe, Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool**

**File No:**                      I2022/893

**22-625**      **Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.483.1 for Staged Development: Stage 1: Farm Cafe, Stage 2: Tourist & Visitor Accommodation Comprising Six (6) Cabins, Swimming Pool, be granted Deferred Commencement in accordance with recommended conditions of consent attached to this report. (Westheimer/Lyon)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

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**Report No. 13.2**      **PLANNING - 10.2020.513.1 Alterations and Additions to Existing Motel including Five (5) Additional Guest Rooms, Restaurant/Bar, Swimming Pool and Car Parking Spaces at 84 Harbour Way BRUNSWICK HEADS**

**File No:**                      I2022/847

**22-626**      **Resolved:**

1. That pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979* (EP&A Act), Development Application No. 10.2020.513.1 for alterations and additions to existing motel including five (5) additional guest rooms, restaurant/bar, swimming pool and car parking spaces at 84 Harbour Way, Brunswick Heads, be deferred to enable without prejudice discussions with staff and submission of amended plans that reflect a low-scale coastal village character and streetscape of Brunswick Heads, as follows:
  - a. reduced the development to a two storey form by
    - i. drop Guest Room 23 one level to replace the Cabana;
    - ii. remove lofts from Guest Room 15 and 16 and setback a much greater distance from the street (Harbour Way)
    - iii. remove the north-eastern "private roof terrace" or setback a much greater distance from the street (Harbour Way)
  - b. The front fence to Harbour Way to be further setback from the boundary to enable sufficient area for landscaping on the subject property.
  - c. Remove terrace associated with 'bar'
  - d. Relocate restaurant terrace to the south of the inside dining area (current location of 'bar') and/or further set-back from the street front
  - e. Remove and/or further setback terraces from the street front. Consider use of

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softer materials for balustrade(upper) component of terrace walls

- f. Additional landscaping (of appropriate size in relation to development) to be placed in the increased street (Harbour Way) setback area to screen/soften street presentation of terraces and building
  - g. Further setback the roof terrace above the restaurant and reduce in area to minimise visual impact on the streetscape.
  - h. consider moving the parking in Fawcett Street westward, if advised by the applicants arborist that the tree will be impacted by the current layout
2. The Application be delegated to staff for determination following receipt and assessment of the amended plans provided they satisfactorily address the matters raised in point 1 above. (Lyon/Dey)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

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**Report No. 13.3**      **PLANNING - 10.2021.212.1 Temporary Use - Rural Function Centre at 36 Keys Road, Coorabell**  
**File No:**                      I2022/892

**22-627 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.212.1 for Temporary Use - Rural Function Centre, be granted consent subject to the conditions of approval as presented in Attachment 2 to this Report 13.3 with the following amendments:

Amend Condition 2 To read

2. NSW Police and Byron Shire Council requirements

The following conditions must be complied with at all times:

- a. The sale, supply and/or consumption of liquor shall be prohibited, unless an appropriate 'Liquor Licence' is in force.
- b. Events/Functions shall be limited to a maximum of twenty (20) per year & not more than one (1) event/function per week. No more than one (1) event will be held at the function centre on any one weekend (Friday to Sunday). Only one (1) function can occur at any given time.
- c. A register specifying the event/function type, date, trading hours and expected & then actual patron numbers shall be kept, and updated for each event. This register shall be made public and searchable on a website or similar and shall be immediately produced to Council Inspector and/or Police Officer on request. The register to be maintained by the owners of the property.
- d. The proponent must provide Council and Local Police District Commander with written notice of any event/function at least seven (7) days prior. This notice must specify event/function type, date, trading hours & expected patron numbers.
- e. A written letter to be dropped in immediately adjoining residential properties is to

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be completed no later than 7 days before bump in activities commence. The written notice is to include details including name, contact details, and phone number of the nominated Manager as well as a complaints management process. The complaints management process must be a user friendly procedure for recording remedying complaints made by members of the public. Information on how to lodge a complaint must be clearly detailed in the letter.

Provision of a sign located so that it can be viewed from a public space outside of the property notifying the name and contact phone number of the nominated manager is to be installed prior to and during each event.

- f. Hours of Operation shall be 12:00pm until 10:00pm seven (7) days, hours of operation shall be reviewable every twelve 12 months including after twelve (12) months of operation and at again at twenty-four 24 months of operation subject to the satisfaction of NSW Police and Byron Shire Council. Note. See Trial Period.
- g. The maximum number of patrons permitted on the venue at any one time is one hundred & fifty (150) excluding the event staff & organizer.
- h. Entertainment shall be restricted by type - the type of entertainment permitted shall be restricted to acoustic soloists & duos and/or low background amplified music only.
- i. The LA10 noise level emitted from the development shall not exceed the background noise level in any Octave Band centre Frequency (31.5Hz - 8kHz inclusive) by more than 5dB between 07:00am and 12:00 midnight at the boundary of any affected residence.  
  
Notwithstanding compliance with the above, the noise from the development shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.
- j. The development must not generate traffic, parking or light spill that will significantly impact on residences in surrounding areas.
- k. The development must not impair the use of the surrounding land for agriculture or rural industries.
- l. The development is not for the purpose of a convention centre, exhibition centre or for music festivals.
- m. The use of fireworks, helicopters and/or other comparable activities is prohibited to occur on this site at all times.
- n. Under no circumstances are patrons to enter another property. The Events Management Plan must include arrangements to ensure patrons remain on the site to avoid illegal trespass and any potential biosecurity incursions.

The written contract for each event is to include a provision to ensure the event manager is briefed on the importance of biosecurity in rural settings even if there is no obvious farming activity nearby.

### Amend Condition 4 to read

#### 4. Annual reviews of this consent

The hours of operation and/or of other parameters of this Consent can be reviewed, if

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required by NSW Police and/or by Byron Shire Council after a review to be conducted every twelve (12) months. Those reviews will also consider any complaints made and substantiated over the period of this Consent.

Amend Condition 6a to read

a) not redirect the flow of any surface water or ground water onto an adjoining property, or cause sediment to be transported onto an adjoining property or into a waterway (including the Wilsons River)

Amend Condition 11 to read

11. Access road - signage to be installed

Clear and obvious signage is to be installed along the access road raising awareness of the potential presence of koalas and other native fauna.

Amend Condition 22

22. Traffic management plan

Consent from Council must be obtained for a Traffic Management Plan pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic during the event from the intersection of Coorabell Road and Keys Road leading into the development access. The traffic management plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

The report must incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to the event.

The traffic management plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller (Dey/Lyon)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

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**Report No. 13.10 PLANNING - 10.2021.619.1 Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision at 99 Station Street - Mullumbimby**

**File No:** I2022/1511

### PROCEDURAL MOTION

**22-628 Resolved** that this matter (13.10) rest on the table. (Lyon/Dey)

*The motion was put to the vote and carried unanimously.*

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### MAYORAL MINUTE

**No. 8.1 Flood Impact Assessment**

**22-629 Resolved** that Council:

1. Advocates to the State Government on behalf of the two properties impacted by above floor flooding by the temporary housing works in Prince St, namely 1 and 5 Poinciana St, to:
  - a) Cover them for future liability for damage to their properties in a flooding event that was caused by the works
  - b) Consider them for a buyback under the Resilient Homes program
2. Asks Resilience NSW to update its Flood Report of November 2022 to include flood hazard (depth x velocity) as well as flood level
3. Notes that any further properties identified in future as being similarly impacted receive the same advocacy. (Lyon)

### PROCEDURAL MOTION

**22-630 Resolved** that Cr Lyon be granted a two minute extension to his speech. (Lyon)

*The motion was put to the vote and carried unanimously.*

*The motion (22-629) was put to the vote and carried unanimously.*

**DELEGATES' REPORTS**

Cr Ndiaye gave a report on the Rous County Council Reconciliation Action Plan Advisory Committee Meeting last Friday.

Cr Pugh noted that the Richmond Tweed Regional Library Mobile Library Service was announced as the winner of the NSW Public Libraries Association Innovation in Outreach Award.

Cr Ndiaye gave a report on the Ingenuity Small Sculpture Prize night.

Cr Lyon gave a report on the Shearwater Wearable Arts Show.

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**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.9**      **Revised Constitution of Climate Change and Resource Recovery Advisory Committee**

**File No:**              I2022/1508

Moved that Council appoints Cr Dey as a fourth Councillor to the Committee and amends the draft constitution accordingly (Dey/Ndiaye)

AMENDMENT

**22-631**      **Resolved** that Council defers the discussion of the proposed constitution at Attachment 1 (E2021/148037) and the proposition that Councillor Dey join the Committee. (Pugh/Lyon)

*The motion was put to the vote and carried unanimously.*

*The amendment was put to the vote and declared carried  
Crs Ndiaye, Balson, and Dey voted against the amendment.*

*The amendment upon becoming the substantive motion was put to the vote and declared carried*

*Crs Balson and Dey voted against the motion.*

PROCEDURAL MOTION

**22-632**      **Resolved** that Report No. 13.10 be lifted from the table. (Lyon)

*The motion was put to the vote and carried unanimously.*



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**Report No. 13.10 PLANNING - 10.2021.619.1 Demolition of Existing Structures and Construction of Multi Dwelling Housing comprising of Four (4) Dwellings and Strata Subdivision at 99 Station Street - Mullumbimby**

**File No:** I2022/1511

**22-633 Resolved** that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.619.1 for demolition of existing structures and construction of multi dwelling housing comprising of four (4) dwellings and strata subdivision, be granted consent subject to the conditions of approval in Attachment 1 subject to the following amendments:

Condition 6 be amended to include: Acoustic enclosure or relocation of the outdoor air conditioning units to be included on the construction certificate plans for approval. (Dey/Ndiaye)

*The motion was put to the vote and carried unanimously.*

*Crs Hunter, Lyon, Ndiaye, Dey, Westheimer, Balson and Pugh voted in favour of the motion.*

*Nil voted against the motion.*

*There being no further business the meeting concluded at 1.10pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Ordinary Meeting on 8 December 2022.



.....  
Mayor Michael Lyon